

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6087

APPEAL OF TIMOTHY D. SEARCHINGER

OPINION OF THE BOARD

(Hearing held October 12, 2005, January 4, 2006, and March 8, 2006)
(Effective Date of Opinion: October 19, 2006)

Case No. A-6087 is an administrative appeal filed by Timothy D. Searchinger (the "Appellant") from the May 25, 2005 decision of the Historic Preservation Commission (the "HPC") to deny Historic Area Work Permit No. 381822 for a two-story addition to the single-family dwelling located at 7305 Holly Avenue, Takoma Park, Maryland 20912 (the "Property").

Pursuant to Sections 24A-7(h), 2-112, and 2A-1 et seq. of the Montgomery County Code, the Board held public hearings on the appeal on October 12, 2005, January 4, 2006, and March 8, 2006. The Appellant appeared *pro se*. Associate County Attorney Vicki L. Gaul represented the HPC. The Board considered the case at its May 3, 2006 Worksession.

Decision of the Board: Administrative appeal **denied**.

FINDINGS OF FACT

The Board finds by a preponderance of the evidence that:

1. The Property, known as 7305 Holly Avenue, is located in the Takoma Park Historic District. The Property is rectangular in shape and consists of about 13,306 square feet. The Property has approximately 53 feet of frontage on the east side of Holly Avenue and is about 252 feet deep along its side lot lines. The Property's topography slopes downward from the front to the rear lot line.

The Property is improved with a circa 1910s, one story "Craftsman" style bungalow. The house has been noted as "The Argyle," a Sears plan house. It is noted also for its architectural details, including notched bargeboards, square rafter ends, and small paned windows. It has been designated an Outstanding Resource in the Takoma Park Historic District. Exhibit 5(f), Appendix A.

There are approximately 920 properties within the Takoma Park Historic District. Of these, approximately 19% are designated as Outstanding Resources, and approximately 18% of those are bungalows. In other words, slightly more than 3% of the properties within the Takoma Park Historic District are bungalows which have been designated as Outstanding Resources. Exhibits 5(d) and 6(i), at page 3 of the June 9, 2005 Decision and Opinion of the Commission. The accuracy of these statistics was not challenged in this proceeding, and thus they are accepted as fact.

Of approximately 37 properties on Holly Avenue, 15 are designated as Outstanding Resources. Only one of those Outstanding Resources is a 20th century Craftsman bungalow; the majority are large Victorian residences dating from the late 1800s. Exhibits 5(d) and 6(i), at page 2 of the June 9, 2005 Decision and Opinion.

2. The bungalow is situated about 33 feet from the front lot line of the Property, and covers 1,416 square feet. The total area of the lot is 13,306 square feet. Thus the "footprint" of the house covers a little more than 10% of the lot.

As noted above, the Property is improved with a circa 1910s bungalow. A one-story, rear addition was added in 1991, prior to the enactment of the "Approved and Adopted Amendment to the Master Plan for Historic Preservation in Montgomery County, Maryland: Takoma Park Historic District & Carroll Manor/Douglas House" (hereinafter referred to as the "Takoma Park Historic District Master Plan"), which took place in August, 1992. Exhibit 5(f). The 11/23/04 HPC staff report indicates that the addition "matches the form and siding of the original house." Exhibit 6(i).

3. The Appellant, who is a co-owner of the subject Property, proposes to construct an approximately 500 square foot second story addition on the rear of the house. A twelve foot wide dormer would extend 7 feet over the roof of the original house to accommodate a stairway to the new second floor. The roof over the bedroom portion of the addition would be styled as a cross gable, and would rise approximately 6 feet above the existing roof.

4. The Appellant submitted an application for Historic Area Work Permit ("HAWP") No. 381822 for the above work to the HPC on April 29, 2005 (Exhibit 5(b) at page 7 et seq.).¹ On May 18, 2005, HPC staff recommended denial of the

¹ This application was a revision to Appellant's November 10, 2004 HAWP application for a similar addition to the Property, which was denied. The Board's review is limited to the final application.

application pursuant to Section 24A-8(a) of the Montgomery County Code, saying, among other things, that the stair dormer would obscure the rear roofline and detract from the horizontality of the historic house. The staff report continued by saying:

The main reason for recommending denial is the portion of the addition that sits on the historic portion of the house. This Sears house is significant as a whole building including its design aesthetic as viewed from an oblique angle. The silhouette of the house and the strength of the offset gables further support staff's professional opinion that the current proposal compromises the architectural integrity and significance of this Outstanding Resource.

Exhibit 5(b). On May 25, 2005, the HPC held a public hearing on the application and, at its conclusion, determined to deny the HAWP. The HPC issued a Decision and Opinion to this effect on June 9, 2005 (Exhibits 5(d) and 6(i)). The Appellant filed this appeal to the Board of Appeals.

5. Mr. Paul Treseder testified on behalf of the Appellant.² He is the architect who designed Appellant's addition. He was accepted as an expert in design in Takoma Park.

Mr. Treseder testified that most of his projects in Takoma Park have involved Category 2 (Contributing) resources, not Outstanding Resources. He said that in designing an addition for Appellant's Category 1 (Outstanding) resource, he needed to consider the home's front porch, notched barge boards, beams, overhangs and the shallow pitch of the roof. He testified that he believed an addition could be designed that was compatible with the Takoma Park Historic District Master Plan guidelines and *The Secretary of the Interior's Standards for Rehabilitation & Illustrated Guidelines for Rehabilitating Historic Buildings (1997 reprint)*³ if the addition (1) was placed to the back of the existing house, (2) was reversible, (3) maintained the general proportions and massing of the existing house, and (4) kept important elements of the home intact. With respect to whether the construction of the addition could be reversed in future, as is recommended in *The Secretary's Standards*, he testified that the addition he designed was readily reversible in that it only affected the asphalt shingles, and did not touch the home's overhangs, gutters, or kitchen chimney.

Mr. Treseder testified that pursuant to suggestions made by the HPC after the initial hearing on this HAWP, he had moved the second floor back two (2) feet,

² All of the witnesses in this case were sequestered at the request of counsel for the HPC.

³ This document will be cited herein as *The Secretary's Standards* when referring only to the Standards section of the document, *The Secretary's Guidelines* when referring to the (non-binding) Guidelines portion of the document, or *The Secretary's Standards and Guidelines*, when referring to the entire document. As noted in the Conclusions of Law section, *The Secretary's Standards and Guidelines* are made applicable by the regulations implementing the Montgomery County Code provisions governing historic preservation, and *The Secretary's Standards* are specifically invoked by the Takoma Park Historic District Master Plan.

had created a small (8") hyphen⁴ between the original home and the addition, had lowered the dormer one (1) foot and had pulled it toward the back of the house, and had proposed using building materials that would make it easy to distinguish the old and new construction. He stated that the proposed construction would entail removing a seven (7) foot by 12 foot piece (84 square feet)⁵ of the roof of the original house, but that the pitch and the overhang of the existing roof had been maintained. He indicated that he had tried to strike a balance between differentiating between the old and new construction, and the need to maintain the scale and massing of the original house. He stated that the rooflines he had proposed were intended to reduce massing, and that he felt the dormer showed the transition between rooflines and eased the transition between old and new.

Mr. Treseder acknowledged that his design would place a symmetrical rear addition on a house with an asymmetrical, eccentric offset gable in front. He also testified that the addition would be visible when the house was viewed from an oblique angle. He testified that the proposed addition would not change the character-defining aspects of the house because it was sited so far back on the house, and that he did not believe the proposed addition would change the horizontal nature of the house. He testified that his proposed addition was "sympathetic" to the architectural character of the existing house, including its massing, height, setbacks and materials.

Mr. Treseder estimated that the addition he designed would cost less than \$200,000 to construct, whereas he estimated that demolishing the existing addition and constructing a split level addition would cost a minimum of \$300,000. He also testified that construction at the rear of the house was constrained by large trees and their root zones.

6. Mr. Timothy Searchinger, Appellant, testified that the Takoma Park Historic District Master Plan recognized the importance of preserving trees as a part of historic preservation. Appellant stated that he is passionate about not taking down trees and upholding the Master Plan.

Appellant testified that he had investigated the option of putting the additional bedroom in the basement, but the ceilings were not tall enough (less than 7 feet), there were pipes everywhere, and there was no stair access. He later stated that the alternatives suggested by the HPC would involve the removal of large trees currently behind the house. Appellant testified that the addition as proposed would not be visible from the front of the house, and that it would not block the view of the tree line. He implied that he did not agree with the conclusion in the June 9, 2005 HPC Opinion that this was a property where the preservation of the historic building should take precedence over the preservation

⁴ Appellant read an excerpt from the hearing into the record which indicated that the hyphen the HPC had suggested was closer to 5 feet.

⁵ Mr. Treseder later testified that this would result in approximately 8% of the original roof area being disturbed.

of trees. Exhibits 5(d) and 6(i), at p. 6 of the June 9, 2005 Decision and Opinion of the Commission.

Appellant testified that the HPC encourages up front consultation with them about proposed work, and that HPC staffer Anne Fothergill had visited the Property and reviewed the plans for the proposed addition. He testified that she told him that the applicable guidelines require that any new section not be taller than the historic structure, and that the HPC would not find this design approvable. See Exhibit 6(j). Appellant testified that he couldn't find anything in the applicable guidelines which says that an addition can't be taller than the historic resource. He testified that as he reads the applicable standards in the Takoma Park Historic District Master Plan, the standard is "sympathetic," and the question to be answered is whether or not the proposed addition is "sympathetic".⁶

With respect to *The Secretary's Standards* (also applicable to this Property by virtue of its being categorized as an "Outstanding" Resource), Appellant testified that Standard 9 talks about "compatibility." See Exhibit 8. When questioned about the rest of Standard 9 and asked why he thought his proposed addition would not alter the historic materials, features, size, scale and proportion, and massing of the property, Appellant stated that any addition would increase mass, and that in his opinion the key was whether or not the addition was compatible. He then described his proposed addition as small, set back, restricted in height, and therefore compatible.

Appellant testified that the dominant language pertaining to new additions which is contained in *The Secretary's Guidelines*⁷ contemplates additional stories. See Exhibit 8, page 93. He testified that he believes that major additions are permitted if they are placed as far back as possible and are as inconspicuous as possible. In discussing this guideline on cross examination, he stated that he couldn't imagine an addition that was lower or smaller or more to the rear (of the house) than his proposed addition. He stated that *The Secretary's Guidelines* and the Takoma Park Historic District Master Plan guidelines repeat that additions should be to the rear and sympathetic.

Appellant testified that Gwen Wright of the HPC had told him that the HPC policy is that you cannot raise the roof on an outstanding resource. He asserted that the language about additions in *The Secretary's Guidelines* would have no meaning if you could not build up.

⁶ The Takoma Park Historic District Master Plan says that one of the factors to be considered in reviewing a HAWP on an Outstanding Resource is whether or not the plans for the alteration are compatible with the resource's original design. This factor goes on to state that additions, specifically, should be "sympathetic" to existing architectural character, including massing, height, setbacks and materials. Exhibit 5(f) at p. 15.

⁷ The Guidelines are intended to help interpret the Standards, and are not binding.

Appellant indicated that there are two HPC staff reports and two HPC decisions regarding his Property. See Exhibit 6(i). He testified that he believed the rationale in the second case (the subject of this appeal) was basically that his Property is characterized by its one-story nature.

When asked on cross examination why the Takoma Park Historic District Master Plan specifically addresses second story additions on Contributing Resources but does not address second story additions to Outstanding Resources, Appellant testified that second story additions are permitted as a right on Contributing Resources, provided they are appropriate to the streetscape and do not dwarf the existing house. He said the Master Plan purposefully relaxed the standards for Contributing Resources in order to stop people from moving out of the neighborhood. He said that the Master Plan neither permits nor prohibits second story additions on Outstanding Resources, and that regardless, *The Secretary's Standards* applied. He reiterated his opinion that you could not read the applicable Standards as imposing an across-the-board prohibition on second story additions to one-story resources, and that the test was whether or not the addition was sympathetic.⁸

Finally, Appellant testified that he has a letter from his neighbors supporting the grant of the Historic Area Work Permit. See Exhibit 6(n).

7. Mr. Albert Courier testified that he lives next door to Appellant at 7307 Holly Avenue. He testified that he is definitely supportive of the proposed addition. He testified that he hasn't made a close analysis of the plans, but feels relaxed and comfortable about the proposed addition.

On cross examination, Mr. Courier testified that he would have no objection to Appellant moving the addition 5 feet further towards the rear of the lot.

8. Ms. Kathryn Kuranda testified on behalf of the Appellant. Ms. Kuranda was qualified as an expert in historic preservation, *The Secretary of the Interior's Standards for Rehabilitation & Illustrated Guidelines for Rehabilitating Historic Buildings*, and the application of the those Standards to local ordinances.

Ms. Kuranda testified that *The Secretary's Standards* were formulated by the Park Service in the 1970s. She testified that they were designed to promote continued service of buildings and were intended to be a pragmatic way to accommodate change over time while preserving the historic aspects of buildings. She testified that the Introduction says these Standards should be applied in a reasonable manner.

⁸ At this juncture, Chairman Fultz clarified that the HPC said that this house could have a raised roofline, just not as presented on the Applicant's plans – it had to be pulled back off the house. See Exhibits 5(d) and 6(i) (June 9, 2005 HPC Decision and Opinion) at page 6.

Ms. Kuranda testified that *The Secretary's Standards* do accommodate additions, specifically standards 9 and 10.

Ms. Kuranda testified that scale was one of many defining features of Appellant's bungalow.

Ms. Kuranda testified that Appellant's proposed addition was consistent with *The Secretary's Standards*, as follows:

- The old and new construction would be distinguishable from one another based on scale and because of texture. She stated that the new construction has "gone up as a hyphen." She testified that the "centered" nature of the proposed addition differentiates it from the asymmetrical nature of the existing bungalow, and that the dormer would also serve to demarcate old and new.
- The bulk of the proposed addition would be over the 1991 addition, thus there would be a minimal loss of historic fabric. She also testified that the roof had undoubtedly been replaced since 1910.
- The proposed addition could be removed, the roof repaired, and the whole building restored.
- With respect to the compatibility of massing and height, she testified that the scale is consistent with the scale and proportions of the Craftsman style.

In sum, she testified that if the proposed addition were constructed, the end result would be a 1910 Sears house with a two-story addition instead of a 1910 Sears house with a one-story addition.

In response to questions about the alternatives suggested by the HPC, Ms. Kuranda testified that those alternatives would still impact character-defining aspects of the historic property, that they would just impact different aspects. She testified that extending the footprint to the rear would destroy the compact nature of the existing footprint. She testified that tree cover and landscaping contribute to the streetscape. She testified that expanding the building to the rear would also interrupt the pattern of open space.

Ms. Kuranda testified on cross examination that language in the Takoma Park Historic District Master Plan addressed additions to Category 2 (Contributing) resources, but did not address additions to Category 1 (Outstanding) resources.

9. Ms. Kim Williams testified on behalf of the HPC. Ms. Williams testified that she had visited the subject home, and that she was a Commissioner on the Historic Preservation Commission when Appellant's HAWP was denied.

Ms. Williams testified that the category 1 “Outstanding Resource” designation of this Property was made before this HAWP came before the HPC. She testified that in Takoma Park, the HPC looks at the guidelines in the Takoma Park Historic District Master Plan, and that if the resource is an Outstanding Resource, they also look at *The Secretary’s Standards*.

Ms. Williams stated that the Appellant had brought variations of his proposal before the HPC on two occasions. See Exhibit 6(i). She explained that under the Takoma Park Historic District Master Plan and *The Secretary’s Standards*, the elements that make an historic resource “Outstanding” cannot be altered. She testified that under Secretary’s Standard 9, the HPC determined that Appellant’s proposal detrimentally affected this house. Standard 9 reads as follows:

New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

Ms. Williams testified that the character-defining features of this home were its shape and massing, its one-story height, and its Craftsman shape and details. She stated that in her opinion, the proposed addition overwhelmed the one-story character of the house and detrimentally affected the historic fabric. She testified that despite having been characterized as “low and small,” this addition was too large for this bungalow.

Ms. Williams testified that this bungalow, sited in the midst of large Victorian houses, tells a story of society rejecting the large excesses of the Victorian era and getting back to a more practical type of house.

Ms. Williams testified that the HPC had weighed the potential removal of trees against the preservation of this home, and had concluded in this case that it was better to remove the trees than to destroy the fabric of this historic resource, since trees can be replanted.

Ms. Williams testified that there is not a blanket prohibition on putting a second story addition on a one story resource, provided the addition keeps the historic resource intact and does not affect the character-defining features of the resource (in this case, its one-story nature). She stated on cross examination that the HPC almost always requires a lower roofline for additions to one- and two-story outstanding resources, that they look at each resource case-by-case, and that she did not recall the HPC permitting a higher roofline on an Outstanding Resource during her tenure as a Commissioner.

With respect to “reversibility,” Ms. Williams testified that the HPC’s first concern is to make sure that the proposed work has the least impact possible on the historic resource, then to make sure that it is reversible. She stated that reversibility was not justification for allowing construction of a very incompatible addition or alteration.

Ms. Williams testified on cross-examination that *The Secretary’s Guidelines* say that you should not undertake additions to historic resources that affect the historic fabric unless necessary to make the building viable. She testified that “viable” in this context does not mean “not big enough.” She testified that sympathetic means small scale, inconspicuous, compatible to, and that affecting as little historic material as possible. She testified that “to the rear” means “behind,” not “towards the rear,” and that the HPC was generally looking to have additions placed more or less off of the historic resource. She testified that references to additional stories provide guidance as to what should be considered where additional stories are absolutely necessary, stating that Appellant had proposed to build his addition on top of his Outstanding Resource when it could have been placed behind the resource. She stated that the HPC looks for the least intrusive manner to construct additions when additions are necessary, and that in this case, there were multiple alternatives, including a no-build alternative.

Ms. Williams testified that the HPC looked for and suggested alternatives to accomplish Appellant’s objectives. She testified that a common mechanism when an applicant wants to build up is to have them build in a “hyphen,” clearly delineating the old and new construction. She testified that in Appellant’s case, a suggestion was also made that they consider building down.

10. Gwen Marcus Wright testified on behalf of the HPC. Ms. Wright testified that she has worked at the Historic Preservation Commission since 1987, and that she has been a manager since 1991. Her current position is Historic Preservation Supervisor in the County-wide Planning Division.

Ms. Wright testified that she was involved in the development of the Takoma Park Historic District Master Plan, and that she was familiar with what could be done to Category 1 (Outstanding), 2 (Contributing) and 3 (Non-contributing or Out-of-Period) resources in terms of additions. She stated that a big issue at the time the Master Plan was developed was the desire for flexibility to allow small houses to be enlarged, and that there was heated discussion about additions to bungalows. She testified that the end result was the compromise language regarding additions to contributing resources, found on page 16 of the Takoma Park Historic District Master Plan.⁹ Regarding additions to Category 1 “Outstanding” Resources, she testified that a decision was made that the HPC would use *The Secretary’s Standards* as guiding principles. In addition, she

⁹ The language in part indicates that second story additions or expansions should be generally consistent with the predominant architectural style and period of the resource.

testified that the word “height” was specifically inserted into the Takoma Park Historic District Master Plan guidelines pertaining to Outstanding Resources, because it was felt that additions to Outstanding Resources had to be compatible in terms of height. She testified that this clear differentiation between the way in which additions to Contributing and Outstanding Resources were treated was a compromise, and that it has allowed bigger changes to Contributing Resources than a pure preservationist would like to see.

Ms. Wright testified that the Master Plan does not prohibit second story additions, but that the Commission looks at these proposals case by case and applies the relevant guidelines.

Ms. Wright testified that the criteria set out in Section 24A-8 of the Montgomery County Code are general and broad, and that virtually all of the historic districts within the County have adopted more specific guidelines for each area. She testified that those guidelines must be consistent with Chapter 24A, but provide more specific criteria. She testified that the executive regulations require that the HPC use the guidance in the applicable Master Plan in reviewing HAWPs. She testified that much of the guidance in the Takoma Park Historic District Master Plan is a restatement of *The Secretary's Standards*. She testified that because of the compromise in Takoma Park which allows second story additions on Contributing Resources, the Takoma Park Historic District Master Plan differentiated between Contributing and Outstanding Resources, making clear that Outstanding Resources must meet *The Secretary's Standards*. She stated that the guidance regarding second story additions to Contributing Resources in the Takoma Park Historic District Master Plan was included with the knowledge that additions adhering to that guidance did not meet *The Secretary's Standards*. She stated on cross examination that that a second story addition to a one-story resource would not meet *The Secretary's Standards*.

Ms. Wright testified that Section 24A.01.01.1.5(b) of the Code of Montgomery County Regulations says that where guidance in the applicable master plan is inconsistent with guidance in *The Secretary's Standards and Guidelines*, the Master Plan guidance takes precedence. She said this was put in to avoid any confusion in areas like Takoma Park where portions of the Master Plan guidance are inconsistent with *The Secretary's Standards*. She testified that the guidance in the Takoma Park Historic District Master Plan was intentionally phrased in the positive (as “guiding” language), and not in the negative (as “forbidding” language).

When asked if she agreed with Kathryn Kuranda's testimony that this addition would be consistent with *The Secretary's Standards* and that it would read as a two-story addition to a one-story structure, Ms. Wright testified that if what Ms. Kuranda was trying to say was that the proposed addition differentiated between the new construction and the old, and thus met *The Secretary's*

Standards, she (Ms. Wright) believes that the addition goes beyond differentiation to incompatibility, and that differentiation alone does not ensure compatibility.

On redirect, Ms. Wright testified again that there really is a distinction between the level of review of an addition to an Outstanding Resource and an addition to a Contributing Resource. She stated that Outstanding Resources are held to the highest level of scrutiny, that only 17% of all properties in the Takoma Park Historic District have been designated as Outstanding, and that the number of bungalows so designated is even smaller. She testified that even when it's hard, County law and policy require that you do really good historic preservation on these Outstanding properties.

11. Mr. Thomas Jester testified on behalf of the HPC. Mr. Jester was qualified as an expert in architecture, historic preservation, and *The Secretary of the Interior's Standards for Rehabilitation & Illustrated Guidelines for Rehabilitating Historic Buildings*.

Mr. Jester testified that in his opinion, the Appellant's HAWP application was not consistent with *The Secretary's Standards*, specifically citing Standards 1, 2, 9 and 10. He testified that the character of the house was in part defined by its number of stories and how it relates to the streetscape. He testified that Appellant's proposal did not meet Standard 9 because the character of the house was in part defined by its one-story nature, and because the proposed addition would have removed historic material. He further indicated that the addition would have changed the original roofline, chimney and overall environment, and thus didn't meet Standard 9 because it was incompatible with the original house (ostensibly in terms of massing, size, scale and features). He testified that Appellant's proposal did not meet Standard 10 because it would have resulted in a change to the form of the house and historic materials. With respect to Standards 1 and 2, which he had also indicated Appellant's proposal failed to meet, he testified that Standard 1 requires minimal change to the defining characteristics of the property, and that Standard 2 requires preservation of the historical character of the property and avoidance of the removal of historic material.

Mr. Jester testified that as an historic preservationist, he would characterize this home as a modest bungalow, defined by its low roofline, its simple character, its massing, and the fact that it is a Sears house. He further testified that the way in which it relates to the streetscape also helps to define its character, and that the street has few bungalows. When asked about massing, Mr. Jester testified that the mass of this house is a one-story gabled house, and that the proposed addition was a second story with a cross-gable. He testified that as such, this addition would change the character of the original house. On cross examination, he testified that placing an addition on top of this house breaks with its low, modestly-scaled character.

Mr. Jester was shown the testimony of Kathryn Kuranda in which, in talking about the proposed addition, she testified that it was “clearly compatible” in terms of massing and height, saying that the “scale” was consistent with the Craftsman style, that the house would now read as a 1910 building with a two story addition, and that minimum historic fabric would be lost. See 1/4/06 Tr. at pages 138 and 139. When asked if he agreed with Ms. Kuranda’s analysis, Mr. Jester disagreed with the finding of compatibility, testifying that the change in mass is critical, and that with the proposed addition, the legibility of the original form would be lost.

Mr. Jester testified on cross examination that the proposed addition needs to be viewed as a whole. When asked if the raising of a roof would always be incompatible with *The Secretary’s Guidelines*, he testified that each proposal needed to be reviewed individually. For example, he testified that it may be permissible to raise the roof on what was already a multistory building. When asked if any raising of the roof could be ever consistent with *The Secretary’s Standards*, Mr. Jester said that while he couldn’t say that raising the roof would never work (on any property), the problem with Appellant’s proposed addition was that it “swallowed” the house and had no legibility of the original form of the house where it terminates at the rear line. He went on to say that the height and location of Appellant’s proposed second story were both problematic.

Mr. Jester suggested on cross-examination that using a hyphen would retain the legibility of the existing house. He indicated that the 1991 addition was not historically significant, and that it would be a good starting point for a rear addition. With respect to reversibility, Mr. Jester stated on cross-examination that the purpose is to encourage additions that can be removed without the need for repairs, and to limit and reduce changes that necessitate repairs. He stated in this case that there were other alternatives that would not impact the historic fabric.

Mr. Jester testified that *The Secretary’s Standards* were created in the mid-1970s and adopted by the tax credit program. He testified that when other agencies began using the Standards, the Park Service adopted the accompanying Guidelines. He testified that only the Standards are codified, and said that the Guidelines associated with the Standards are not binding in any sense, and are essentially administrative guidance to assist the public and professionals around the country in using *The Secretary’s Standards*.¹⁰ Mr. Jester testified that the original Standards were simplified in the early 1990s, and that the Park Service is always updating the Guidelines. On cross examination, Mr. Jester stated that the Guidelines can be consulted for help in understanding the Secretary’s Standards, but that the Park Service makes clear that the Guidelines are not specific to any one property.

12. Ms. Tanya Tully testified on behalf of the HPC. Ms. Tully is an historic preservation planner on staff to the Historic Preservation Commission. She

¹⁰ He further testified that there was a single set of Standards and Guidelines for all types of historic buildings – residential, commercial, agricultural, etc.

testified that it is her job to work with HAWP applicants to help them develop an approvable plan, and that she worked with Appellant on his HAWP application.

Ms. Tully testified that she wrote the May 19, 2005 staff report. She testified that she reviewed the application and compared it with the previous submission. She testified that she applied *The Secretary's Standards*, and that she also found reproductions of the Sears catalog showing the Argyle home, and compared the subject house to that catalog. She showed pictures of the subject house as compared with the catalog renderings. She testified that the catalog shows the character-defining features of the house (including its windows, its one-story nature, and its porch), and stated that that is what the HPC was trying to preserve. See Exhibit 13.

CONCLUSIONS OF LAW

1. Section 24A-7(h)(1) of the Montgomery County Code provides that:

“Within 30 days after the Commission makes a public decision on an application, an aggrieved party may appeal the Commission’s decision to the Board of Appeals, which must review the decision de novo. The Board of Appeals may affirm, modify, or reverse any order or decision of the Commission.”

2. Ordinarily, as this Board has previously held, when an appeal from a quasi-judicial body is heard “de novo,” the matter is to be tried anew as if it had not been heard before and as if no decision had been previously rendered. In effect, the Board is exercising what amounts to original jurisdiction. For all intents and purposes, it is the first hearing of the case. *Pollard's Towing, Inc. v. Berman's Body Frame & Mech., Inc.*, 137 Md. App. 277, 768 A.2d 131 (2001); *Boehm v. Anne Arundel County*, 54 Md. App. 497, 459 A.2d 590 (1985); *Lohrmann v. Arundel Corp.*, 65 Md. App. 309, 500 A.2d 344 (1985); *Hill v. Baltimore County*, 86 Md. App. 642, 587 A.2d 1155 (1991).

We find, however that words “de novo” in this case do not have the same significance as they ordinarily might. The Maryland courts have stated that the meaning of the term “de novo” with respect to administrative appeals may vary with the subject matter of the review, the function of the agency, or the nature of the remedy. *Boehm*, 459 A.2d at 598. “There are many provisions in Maryland law for what are loosely termed de novo ‘appeals.’ Some of these appeals are less ‘de novo’ than others in that the action of the body subject to review retains some vitality and must be considered in the reviewing process.” *Lorhmann*, 500 A.2d at 348.

In this case, the function of the Board is not, as it is elsewhere in the Code provided, to “hear” or “decide” the matter “de novo” (see, e.g., appeals from the Sign Review Board, Section 59-F-10.3). Under the Historic Preservation ordinance, rather, the Board’s function is to “review the [HPC] decision de novo.” We must assume that the County Council meant to use these particular words, and we must give them meaning. In order to review a decision, we must consider

the decision. We think it is altogether appropriate, then, for the HPC to participate in the hearing and present its findings and reasons for making the decision that it did.

With respect to the burden of proof, Section 2A-8(d) of the County's Administrative Procedure Act, which governs this proceeding, states unequivocally that "where a governmental agency or an administrative authority is a party, such agency or administrative authority shall have the burden of going forward with the production of evidence at the hearing before the hearing authority." In this case, by agreement of the parties and the Board, the Appellant presented his case first, but this does not affect the burden of proof. Section 2A-10(b) provides that "all recommendations and/or decisions of the hearing authority shall be based upon and supported by a preponderance of the evidence of record." Consequently, where HPC is a party, it is required to produce evidence to show that its decision is correct. The Appellant may produce evidence to the contrary. The Board's duty is simply to determine, by a preponderance of the evidence presented by all of the parties, whether the HAWP was correctly denied.

3. In reviewing an application for an historic area work permit, we look first to the criteria set out in Section 24A-8 of the Montgomery County Code:

"(a) The commission shall instruct the director to deny a permit if it finds, based on the evidence and information presented to or before the commission that the alteration for which the permit is sought would be inappropriate, inconsistent with or detrimental to the preservation, enhancement or ultimate protection of the historic site or historic resource within an historic district, and to the purposes of this chapter.

(b) The commission shall instruct the director to issue a permit, or issue a permit subject to such conditions as are found to be necessary to insure conformity with the purposes and requirements of this chapter, if it finds that:

(1) The proposal will not substantially alter the exterior features of an historic site or historic resource within an historic district; or

(2) The proposal is compatible in character and nature with the historical, archeological, architectural or cultural features of the historic site or the historic district in which an historic resource is located and would not be detrimental thereto or to the achievement of the purposes of this chapter; or

(3) The proposal would enhance or aid in the protection, preservation and public or private utilization of the historic site or historic resource located within an historic district in a manner compatible with the historical, archeological, architectural or cultural value of the historic site or historic district in which an historic resource is located; or

(4) The proposal is necessary in order that unsafe conditions or health hazards be remedied; or

(5) The proposal is necessary in order that the owner of the subject property not be deprived of reasonable use of the property or suffer undue hardship; or

(6) In balancing the interests of the public in preserving the historic site or historic resource located within an historic district, with the interests of the public from the use and benefit of the alternative proposal, the general public welfare is better served by granting the permit.

(c) It is not the intent of this chapter to limit new construction, alteration or repairs to any 1 period or architectural style.

(d) In the case of an application for work on an historic resource located within an historic district, the commission shall be lenient in its judgment of plans for structures of little historical or design significance or for plans involving new construction, unless such plans would seriously impair the historic or architectural value of surrounding historic resources or would impair the character of the historic district.”

We must also consider the criteria for HAWP approvals set out on the HPC’s regulations, as codified at Section 24A.01.01.1.5 of the Code of Montgomery County Regulations:

“(a) The Commission shall be guided in their review of Historic Area Work Permit applications by:

(1) The criteria in Section 24A-8.

(2) The Secretary of the Interior's Standards and Guidelines for Rehabilitation.

(3) Pertinent guidance in applicable master plans, sector plans, or functional master plans, including categorization of properties in historic districts by level of significance - if applicable. Such categories will be defined and explained clearly in the applicable plans.

(4) Pertinent guidance in historic site or historic district-specific studies. This includes, but is not limited to, the 1992 Long Range Preservation Plans for Kensington, Clarksburg, Hyattstown, and Boyds.

(b) Where guidance in an applicable master plan, sector plan, or functional master plan is inconsistent with the Secretary of the Interior's Standards and Guidelines for Rehabilitation, the master plan guidance shall take precedence.”

The pertinent master plan for the Takoma Park Historic District is the “Approved and Adopted Amendment to the Master Plan for Historic Preservation in Montgomery County, Maryland: Takoma Park Historic District & Carroll Manor/Douglas House” dated August 1992 (Exhibit 5(f)) (referred to herein as the “Takoma Park Historic District Master Plan”). The following provisions pertain to the subject application:

“Outstanding resource: A resource which is of outstanding significance due to its architectural and/or historical features. An outstanding resource may date from any historical period and may be representative of any architectural style. However, it must have special features, architectural details and/or historical associations that make the resource especially representative of an architectural style, it must be especially important to the history of the district, and/or it must be especially unique within the context of the district.” (p. 12).

“The purpose of categorizing structures within the Takoma Park Historic District as “Outstanding”, “Contributing”, and “Non-contributing/Out-of-Period” is to provide the Historic Preservation Commission with guidance as to the architectural and historical significance of various resources. Structures with the highest degree of importance should receive the most detailed level of design review for HAWPs, structures of little historical significance should receive the most lenient level of design review for HAWPs, etc.

There are two very general, broad planning and design concepts which apply to all categories. These are:

- the design review emphasis will be restricted to changes that are at all visible from the public right-of-way, irrespective of landscaping or vegetation (it is expected that the majority of new additions will be reviewed for their impact on the overall district), and
- the importance of assuring that additions and other changes to existing structures act to reinforce and continue existing streetscape, landscape, and building patterns rather than to impair the character of the historic district.

OUTSTANDING RESOURCES—RESIDENTIAL

These resources have the highest level of architectural and/or historical significance. While they will receive the most detailed level of design review, it is permissible to make sympathetic alterations, changes and additions to Outstanding Resources.

As a set of guiding principles for design review of Outstanding Resources, the Historic Preservation Commission will utilize the *Secretary of Interior's 'Standards for Rehabilitation'*.

Specifically, some of the factors to be considered in reviewing HAWPs on Outstanding Resources:

- plans for all alterations should be compatible with the resource's original design; additions, specifically, should be sympathetic to existing architectural character, including massing, height, setbacks and materials
- emphasize placement of major additions to the rear of existing structures so that they are less visible from the public right of way
- while additions should be compatible, they are not required to be replicative of earlier architectural styles
- preservation of original and distinctive architectural features, such as porches, dormers, decorative details, shutters, etc. is encouraged
- preservation of original windows and doors, particularly those with specific architectural importance, and of original size and shape or openings is encouraged
- preservation of original building materials and use of appropriate, compatible new materials is encouraged
- all changes and additions should respect existing environmental settings, landscaping, and patterns of open space" (pp. 14 and 15.)

Finally, the provisions of *The Secretary of the Interior's Standards & Illustrated Guidelines for Rehabilitating Historic Buildings* most pertinent to the analysis of this case are Standards Number 1, 2, 9 and 10, which state:

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.
2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.
9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.
10. New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

See Exhibit 8 at pages vi-vii.

4. From these regulations and standards, we glean the following guiding principles applicable to the Appellant's HAWP proposal:

- Because this HAWP proposal is for an addition to an Outstanding Resource, it should receive the most detailed level of design review;
- The proposed alterations must be compatible with the resource's original design and yet must be differentiated from the existing house;
- The proposed addition, specifically, must be sympathetic to existing architectural character, including massing, height, setbacks and materials, and should be compatible with the historic materials, features, size, scale and proportion, and massing of the resource;
- The proposal must avoid the removal of distinctive or historic materials or the alteration of features, spaces, and spatial relationships that characterize this property;
- The proposed addition must be placed to the rear of the existing structure; and
- The proposed addition must be such that, if it were removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

5. Appellant's testimony indicates that he understands which standards of review are made applicable to his property by virtue of its classification as an Outstanding Resource, i.e. Chapter 24A of the Montgomery County Code, the applicable Code of Montgomery County Regulations (those implementing Chapter 24A), the Takoma Park Historic District Master Plan, and *The Secretary of the Interior's Standards for Rehabilitation & Illustrated Guidelines for Rehabilitating Historic Buildings*.

6. Applying these guiding principles to the HAWP application before us, we find that the weight of evidence does not support approval of the proposed work.

First, the uncontroverted evidence before the Board establishes that the Appellant's home, at 7305 Holly Avenue, has been categorized as and is considered an "Outstanding Resource" in the Takoma Park Historic District. See Exhibit 5(f), Takoma Park Historic District Master Plan, Appendix A. Appendix A describes the architectural and historical significance of this circa 1910s, Craftsman style home, as follows: "Sears, The Argyle notched bargebd, sq rafter ends, sm panes." The Appellant does not challenge the classification of his home as an Outstanding Resource.

Appellant's "one-story, gable-front bungalow," as it was described in the 11/23/04 and 5/18/05 HPC staff reports, was cited in those reports as "an excellent

example of its type and style.” The reports note that “[f]eatures characteristic of the bungalow type include the low-pitched roof, wide eaves, and the stringcourse – all of which emphasize the horizontality of the house.” See Exhibit 6(i). Indeed, the HPC concluded that the one-story, horizontal nature of this house is one of its “major character-defining features.” See Exhibit 6(i) (June 9, 2005 Decision and Opinion of the HPC). That the subject house is characterized by its one-story, horizontal nature was confirmed in testimony by both Ms. Williams and Mr. Jester. The Board is persuaded after reviewing the evidence in the record that the streamlined, horizontal lines of this Sears’ bungalow and its single story nature are character-defining aspects of the subject home.

There is currently a one-story addition on the rear of the bungalow which is styled as an uninterrupted extension of the wall and roof planes of the original home. Pictures of the home confirm that this is a one-story home with a low-pitched roof that runs from the front of the house to the rear. See Exhibit 6(c). The Board has determined, after comparing pictures of the subject home with Sears catalog renderings of The Argyle model and considering the testimony of Ms. Tully, that the subject home appears to be an intact example of this catalog home, with a one-story addition at the rear. See Exhibit 13. Additionally, the Board finds that the Sears catalog renderings of The Argyle, which depict the home from an oblique angle, coupled with testimony about unique features located on the side of this home and that this home is characterized by its one-story nature, demonstrate that this home was intended not to be viewed just from the front, but also from oblique angles, and thus confirm the need to preserve not just the face of this home, but also its entire silhouette and structure.

7. The June 9, 2005, Decision and Opinion of the [Historic Preservation] Commission indicates that this home is one of only a handful of bungalows in the Takoma Park Historic District which have been designated as Outstanding Resources, and it is the only such bungalow on Holly Avenue.¹¹ The Board finds that the historical significance and relative uniqueness of this bungalow make the need to strictly construe the instructions in the Takoma Park Historic District Master Plan all the more pressing, since the Master Plan states that “[s]tructures with the highest degree of importance should receive the most detailed level of design review for HAWPs.”

8. Appellant’s HAWP application indicates that he is seeking to construct a two-story rear addition on the existing home. The architectural plans and testimony of record clearly show that the proposed addition, while placed towards the rear of the subject home and located largely over the 1991 addition, will also sit atop the roof of the original home, and that its construction will require the

¹¹ The Board further notes that the June 9, 2005, HPC Decision indicates at page 3 that “There are approximately 920 properties within the Takoma Park Historic District. Of these, approximately 19% are designated as Outstanding. Of the Outstanding resources approximately 18% are Bungalows.” See Exhibit 6(i). Appellant has not challenged the accuracy of these statistics. Taken in combination, these statistics show that only about 3% of the properties in the Historic District are bungalows which have been categorized as Outstanding resources. This makes the need to employ the most detailed level of design review with respect to proposed HAWPs for this bungalow all the more pressing.

removal of 84 square feet of the roof of the original home (a seven (7) foot by twelve foot area, approximately 8% of the original roof area). See October 12, 2005 Tr. at pp. 53, 62, 83 and 100 (testimony of Paul Treseder); January 4, 2006 Tr. at pp. 56-57 (testimony of Appellant); Exhibit 6(b). Similarly, the architectural plans and testimony of record show that the roof of the proposed addition will be a total of approximately six (6) feet higher than the roof of the existing home. It will consist of a dormer in front (dimensions set forth above), and a higher transverse pitched roof behind (i.e. the predominant roofline of the proposed addition would run perpendicular to the roofline of the existing home, from the left side of the house to the right side). While the roof of the addition may not be visible when standing directly in front of the house, evidence indicates that it would be visible when the house is viewed from a distance or from an oblique angle. See October 12, 2005 Tr. p. 81 and 112 (testimony of Paul Treseder); January 4, 2006 Tr. p. 84 (testimony of Timothy Searchinger); Exhibit 6(b). The facts regarding the size, shape, design and placement of the proposed addition are not in dispute.

The Board finds, based on this undisputed evidence, that the proposed addition would change the character-defining height and the silhouette of this one-story, horizontal home, and would place substantial mass atop the current streamlined shape¹² Thus the Board is persuaded by testimony of record¹³ and by virtue of its own examination of the plans for this proposed second story, cross-gabled addition that the proposed addition is not sympathetic to the architecture of the existing house in terms of height or massing, and as such, cannot be approved. The Board therefore finds that the proposed addition fails to meet the

¹² In addition to the criteria set forth above, the Board notes that the Guidelines accompanying the Secretary's Standards for Rehabilitation, in talking about Roofs, specifically discourage "Radically changing, damaging, or destroying roofs which are important in defining the overall historic character of the building so that, as a result, the character is diminished" and "changing the configuration of roof by adding new features such as dormer windows, vents, or skylights so that the historical character is diminished." Exh. 8 at p. 25. Finally, with respect to alterations and additions affecting existing roofs, the Guidelines specifically prohibit "Radically changing a character-defining roof shape or damaging or destroying character-defining roofing material as a result of incompatible design or improper installation techniques." See Exhibit 8 at pages 28. Finally, with respect to Recommended actions with respect to "New Additions to Historic Buildings, " the Board notes that the Guidelines recommend "Constructing a new addition so that there is the least possible loss of historic materials and so that character-defining in features are not obscured, damaged or destroyed." See Exhibit 8 at page 91. Despite testimony from Mr. Treseder that in his opinion, the proposed addition was placed so far back that it did not conflict with these Guidelines, and that "least possible loss" means that the least means possible when balancing all competing needs, the Board finds that the proposed construction is at odds with the Guidelines.

¹³ The Board was particularly persuaded by the testimony of Kim Williams in this regard. Ms. Williams testified that she had visited the subject home. She testified that the character-defining features of this home were its shape and massing, that it was one story in height and that it was defined by its shape and details. She stated that in her opinion, the proposed addition overwhelmed the one-story character of the house and affected the historic fabric. The Board acknowledges testimony from Paul Treseder that he strives to make all of his designs "sympathetic" to the architectural character of the existing house, including massing, height, setbacks and materials, and that in his opinion, the proposed addition is just that, but respectfully disagrees with Mr. Treseder's opinion (and that of Appellant) that this addition is sympathetic in terms of height and massing. As noted above, the addition is taller than the existing Outstanding resource, and adds substantial mass atop of and perpendicular to the original horizontal roofline.

specific criteria set forth in the Takoma Park Historic District Master Plan for reviewing HAWPs on Outstanding Resources, and must be denied.

In addition, as previously mentioned, construction of the proposed addition would raise and alter the roofline of the historic resource, and would involve the removal of a portion of its roof. While the Board acknowledges testimony from Paul Treseder and Kathryn Kuranda that the impact of the proposed addition on the historic roof was readily reversible, the Board is more persuaded by testimony from Kim Williams that reversibility should be a secondary consideration and that the primary concern should be keeping the historic resource intact if at all possible. The Board finds that the addition proposed in this case, by cutting a new, higher “dormer” in the roof of this historic resource, would change its height, massing, and (formerly horizontal) lines, thereby altering the features, spaces, and spatial relationships that characterize this property. Thus the Board concludes that notwithstanding its reversibility, which would nevertheless entail repair and replacement to restore the original roof form, under *The Secretary’s Standards*, this addition similarly cannot be approved.

9. The Board wishes to acknowledge testimony from Appellant and Mr. Treseder that there were several large trees behind the house which would have to be removed if the proposed addition were constructed behind the existing home. The Board is sympathetic to Appellant’s desire to preserve these large trees, but agrees with the HPC that while the trees can be replaced, this historic house—an Outstanding Resource—cannot.¹⁴ The Board notes that were it to approve this HAWP, nothing in its decision would prevent the Appellant or future owners from removing these trees anyway. The Board is thus persuaded by the evidence of record and the testimony of Kim Williams (describing the consideration given this issue by the HPC) that in this case, the importance of preserving this house outweighs the importance of preserving the trees.

10. The Board in this case finds no inconsistency between the criteria applicable to this Property as an Outstanding Resource, and the application of those criteria by the HPC. For the reasons set forth above and substantiated by the evidence in the record, the Board finds that the proposed addition fails to meet the criteria of both the Takoma Park Historic District Master Plan and *The Secretary’s Standards and Guidelines*. In light of the foregoing, the Board finds that the alteration for which Appellant seeks an historic area work permit would be inconsistent with the preservation of this historic Property, and, pursuant to Section 24A-8(a) of the Montgomery County Code, must be denied.

Accordingly, this Board finds by a preponderance of the evidence that that the HPC’s denial of the requested HAWP was correct and proper. The Appellants’ appeal is therefore **DENIED**.

¹⁴ This preference for preserving the house at the expense of the trees was stated at the December 1, 2005 HPC meeting by Commissioners Watkins and Fuller. See Exhibit 6(k) at circles 20 and 30.

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Member Angelo M. Caputo, seconded by Member Caryn Hines, with Chairman Allison I. Fultz, Vice Chairman Donna Barron, and Member Wendell M. Holloway in agreement, the Board adopted the foregoing Resolution.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 19th day of October, 2006.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County on accordance with the Maryland Rules of Procedure.